

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA**

<b>BUDDY GILL,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
	§	
<b>vs.</b>	§	<b>Case No.: 1:06-cv-718</b>
	§	
	§	
<b>SORRELLS FUNERAL HOME, INC.,</b>	§	
<b>and TERRY G. SORRELLS,</b>	§	
	§	
<b>Defendants.</b>	§	

**MOTION TO DISMISS**

COME NOW, the Defendants, Sorrells Funeral Home, Inc., and Terry G. Sorrells, through counsel, and pursuant to Rule 10 of the Federal Rules of Civil Procedure, hereby move this court to strike or dismiss paragraph 23 of Plaintiff's Complaint in that the Plaintiff seeks to improperly include a breach of contract and/or unjust enrichment count within the claim under the Fair Labor Standards Act.

Rule 10(b) states that each claim should be stated in a separate count for purposes of clarity. If Plaintiff seeks to maintain a claim for breach of contract and/or unjust enrichment, then that cause of action should be set out separately.

WHEREFORE, the Defendants pray that this court strike or dismiss paragraph 23 from the Plaintiff's Complaint.

Respectfully submitted,

s/ Elizabeth B. Glasgow  
Elizabeth B. Glasgow ASB-8348-S58E  
Attorney for Defendants  
Farmer, Price, Hornsby & Weatherford, L.L.P.  
100 Adris Place (36303)  
Post Office Drawer 2228  
Dothan, Alabama 36302  
Tel: 334/793-2424  
Fax: 334/793-6624  
Email: eglasgow@fphw-law.com

Of Counsel:

S. Mark Andrews  
Attorney for Defendants  
Morris, Cary, Andrews, Talmadge & Jones, LLC  
P. O. Box 1649  
Dothan, Alabama 36302  
Tel: (334) 792-1420  
Fax: (334) 673-0077  
Email: MAndrews@MCATLaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on September 5, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

William R. Davis, Esq.  
Attorney for Plaintiff  
Davis & Herrington, L.L.C.  
Park Place Center  
8650 Minnie Brown Road, Suite 150  
Montgomery, Alabama 36117

s/ Elizabeth B. Glasgow  
Of Counsel